

**BEFORE THE APPEALS BOARD  
FOR THE  
KANSAS DIVISION OF WORKERS COMPENSATION**

**JANET I. REESE**

Claimant

VS.

**BEVERLY HEALTHCARE PITTSBURG**

Respondent

AND

**INSURANCE COMPANY OF  
THE STATE OF PENNSYLVANIA**

Insurance Carrier

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Docket No. 1,024,449

**ORDER**

Claimant appealed the June 20, 2007, preliminary hearing Order entered by Administrative Law Judge Kenneth J. Hursh.

**ISSUES**

Claimant requests medical treatment (including replacement surgery) for her right knee, which she alleges was aggravated as a natural consequence of a May 17, 2005, work-related injury to her left knee. In the June 20, 2007, Order, Judge Hursh denied claimant's request for medical treatment after finding claimant had failed to prove the arthritis in her right knee was aggravated or accelerated as a direct, natural consequence of the May 2005 left knee injury.

Claimant contends the Judge erred as the evidence establishes the right knee was injured or aggravated as a direct consequence of the left knee injury. Accordingly, claimant requests the Board to reverse the June 20, 2007, Order.

Conversely, respondent and its insurance carrier (respondent) argue this appeal should be dismissed for lack of jurisdiction as the issue being appealed is whether claimant should receive additional medical benefits, which is not a jurisdictional issue under K.S.A. 44-534a. In the alternative, respondent argues the Order should be affirmed as the problem in claimant's right knee is simply due to the natural aging process and, in essence, the court-appointed physician did not find that the osteoarthritis in the right knee had been aggravated or accelerated by the left knee injury.

The only issues before the Board on this appeal are:

1. Does the Board have jurisdiction at this juncture to review the June 20, 2007, preliminary hearing Order?
2. If so, did claimant prove her present need for medical treatment to her right knee is a natural consequence of the left knee injury that she sustained in May 2005 while working for respondent?

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record compiled to date and considering the parties' arguments, the undersigned Board Member finds the preliminary hearing Order should be reversed.

The Board has jurisdiction at this juncture to review the June 20, 2007, preliminary hearing Order. The issue before the Board on this appeal is whether claimant's right knee injury is a natural consequence of her May 2005 left knee injury. Or stated another way, did the right knee injury result from an accident that arose out of and in the course of claimant's employment with respondent? And that issue is designated by K.S.A. 44-534a as a jurisdictional issue that may be reviewed in an appeal of a preliminary hearing order.

Claimant's testimony is credible. And that testimony establishes that she injured her left knee while working at respondent's nursing home on May 17, 2005, when she helped lift a nursing home resident into a chair and her left knee popped. Claimant experienced immediate, severe left knee pain. And she promptly sought medical treatment and was given crutches. Despite ongoing symptoms, claimant eventually resumed her duties as a CNA at the nursing home.

Unfortunately, upon returning to work claimant favored her left leg and walked with a limp. Within a month or two of the May 2005 incident, claimant developed pain in her right knee. In July 2005, claimant underwent an arthroscopic procedure on her left knee and in June 2006, she underwent left knee replacement. Meanwhile, claimant's right knee symptoms progressively worsened to the point that she is now a candidate for a right knee replacement.

Immediately before the May 2005 incident at work, claimant's knees were asymptomatic notwithstanding the fact she had previously undergone surgery on both. The earlier right knee surgery, an arthroscopic procedure, was performed in 1999 to trim a piece of torn cartilage.

Claimant's testimony is generally supported by the medical evidence that has been introduced thus far. At her attorney's request, claimant was examined by

Dr. Edward J. Prostic in November 2005. At that time Dr. Prostic recognized that claimant needed a total replacement of the left knee and that from favoring the left leg she had aggravated preexisting disease in her right knee, which would eventually require a total knee replacement. In a March 30, 2007, letter to claimant's attorney, Dr. Prostic further indicated he believed the May 2005 left knee injury caused claimant to overuse the right knee, which accelerated the degeneration in that knee.

On the other hand, Dr. William O. Hopkins, who performed claimant's left total knee replacement, provided his opinion that claimant's right knee medical expenses might more appropriately be paid by her private insurance. The doctor reached that conclusion as osteoarthritis is naturally occurring and he was not aware of any definite injury to the right knee. The doctor's March 1, 2007, medical notes read in pertinent part:

The operated on knee appears to be doing well at this time. She does have degenerative changes in the opposite knee and she is quite symptomatic in that area.

She feels that this is due to her work related situation, however without a definite injury to the opposite knee and with osteoarthritis of the knee being a naturally occurring event, it is difficult for me to feel comfortable indicating that the nonoperative knee is osteoarthritic because of her work related activities. I would suggest that this may be more appropriately taken care of under her private insurance.<sup>1</sup>

The above opinion from Dr. Hopkins indicates the osteoarthritis in claimant's right knee was not caused by claimant's work activities. But, more importantly, it does not address the real question before us – did the altered gait from claimant's left knee injury aggravate, accelerate, or intensify the preexisting disease process in her right knee. Consequently, Dr. Prostic's medical opinion on that issue is uncontradicted.

An injury is compensable under the Workers Compensation Act even when an accident at work only serves to aggravate a preexisting condition.<sup>2</sup> The test is not whether the accident *caused* a preexisting condition but, instead, whether the accident aggravated or accelerated a preexisting condition.<sup>3</sup>

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<sup>1</sup> P.H. Trans., Resp. Ex. 1.

<sup>2</sup> *Odell v. Unified School District*, 206 Kan. 752, 481 P.2d 974 (1971).

<sup>3</sup> *Woodward v. Beech Aircraft Corp.*, 24 Kan. App. 2d 510, 949 P.2d 1149 (1997).

Based upon this record, it is more probably true than not that following her May 2005 left knee injury claimant developed an altered gait, which, in turn, aggravated and accelerated the degenerative disease in her right knee to the point that she is now a candidate for right knee replacement surgery. In short, claimant's present right knee problems and the need for replacement surgery are a natural consequence of the May 2005 accident. Consequently, claimant is entitled to receive the appropriate medical treatment.

By statute, preliminary hearing findings and conclusions are neither final nor binding as they may be modified upon a full hearing of the claim.<sup>4</sup> Moreover, this review of a preliminary hearing Order has been determined by only one Board Member, as permitted by K.S.A. 2006 Supp. 44-551(i)(2)(A), unlike appeals of final orders, which are considered by all five members of the Board.

**WHEREFORE**, the undersigned Board Member reverses the June 20, 2007, Order. Respondent and its insurance carrier are required to provide appropriate medical treatment for claimant's right knee.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of September, 2007.

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BOARD MEMBER

c: William L. Phalen, Attorney for Claimant  
Stephen P. Doherty, Attorney for Respondent and its Insurance Carrier  
Kenneth J. Hursh, Administrative Law Judge

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<sup>4</sup> K.S.A. 44-534a.